

drainage district. We will treat failure to make these payments as a violation of the lease.

(c) Where the property is subject to at least one other lease for another compatible use, such as grazing, the lessees may agree among themselves how to allocate payment of the operation and maintenance charges.

WSR LEASE BONDING AND INSURANCE

§ 162.559 Must a lessee provide a performance bond for a WSR lease?

The lessee must provide a performance bond or alternative form of security, except as provided in paragraph (f) of this section.

(a) The performance bond or alternative form of security must be in an amount sufficient to secure the contractual obligations including:

(1) No less than:

(i) The highest annual rental specified in the lease, if the compensation is paid annually; or

(ii) If the compensation is not paid annually, another amount established by BIA in consultation with the tribe for tribal land or, where feasible, with Indian landowners for individually owned Indian land;

(2) The installation of any required permanent improvements;

(3) The operation and maintenance charges for any land located within an irrigation project; and

(4) The restoration and reclamation of the leased premises, to their condition at the start of the lease term or some other specified condition.

(b) The performance bond or other security:

(1) Must be deposited with us and made payable only to us, and may not be modified without our approval, except as provided in paragraph (b)(2) of this section; and

(2) For tribal land, if the lease so provides, may be deposited with the tribe and made payable to the tribe, and may not be modified without the approval of the tribe.

(c) The lease must specify the conditions under which we may adjust security or performance bond requirements to reflect changing conditions, including consultation with the tribal landowner for tribal land before adjustment.

(d) We may require that the surety provide any supporting documents needed to show that the performance bond or alternative forms of security will be enforceable, and that the surety will be able to perform the guaranteed obligations.

(e) The performance bond or other security instrument must require the surety to provide notice to us at least 60 days before canceling a performance bond or other security. This will allow us to notify the lessee of its obligation to provide a substitute performance bond or other security and require collection of the bond or security before the cancellation date. Failure to provide a substitute performance bond or security is a violation of the lease.

(f) We may waive the requirement for a performance bond or alternative forms of security if:

(1) The lease is for public purposes; or

(2) The Indian landowners request it and we determine a waiver is in the Indian landowners' best interest.

(g) For tribal land, we will defer to the tribe's determination that a waiver of the performance bond or alternative form of security is in its best interest, to the maximum extent possible.

§ 162.560 What forms of security are acceptable under a WSR lease?

(a) We will accept a performance bond only in one of the following forms:

(1) Certificates of deposit issued by a federally insured financial institution authorized to do business in the United States;

(2) Irrevocable letters of credit issued by a federally insured financial institution authorized to do business in the United States;

(3) Negotiable Treasury securities; or

(4) Surety bonds issued by a company approved by the U.S. Department of the Treasury.

(b) We may accept an alternative form of security approved by us that provides adequate protection for the Indian landowners and us, including but not limited to an escrow agreement and assigned savings account.

(c) All forms of performance bonds or alternative security must, if applicable:

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(1) Indicate on their face that BIA approval is required for redemption;

(2) Be accompanied by a statement granting full authority to BIA to make an immediate claim upon or sell them if the lessee violates the terms of the lease;

(3) Be irrevocable during the term of the performance bond or alternative security; and

(4) Be automatically renewable during the term of the lease.

(d) We will not accept cash bonds.

§ 162.561 What is the release process for a performance bond or alternative form of security under a WSR lease?

(a) Upon expiration, termination, or cancellation of the lease, the lessee must ask BIA in writing to release the performance bond or alternative form of security.

(b) Upon receiving the request under paragraph (a) of this section, BIA will:

(1) Confirm with the tribe, for tribal land or, where feasible, with the Indian landowners for individually owned Indian land, that the lessee has complied with all lease obligations; and

(2) Release the performance bond or alternative form of security to the lessee unless we determine that the bond or security must be redeemed to fulfill the contractual obligations.

§ 162.562 Must a lessee provide insurance for a WSR lease?

Except as provided in paragraph (c) of this section, a lessee must provide insurance when necessary to protect the interests of Indian landowners and in the amount sufficient to protect all insurable permanent improvements on the leased premises.

(a) The insurance may include property, liability, and casualty insurance, depending on the Indian landowners' interests to be protected.

(b) Both the Indian landowners and the United States must be identified as additional insured parties.

(c) We may waive the requirement for insurance upon the request of the Indian landowner, if a waiver is in the best interest of the Indian landowner, including if the lease is for less than fair market rental or nominal compensation. For tribal land, we will defer, to the maximum extent possible,

to the tribe's determination that a waiver is in its best interest.

WSR LEASE APPROVAL

§ 162.563 What documents are required for BIA approval of a WSR lease?

A lessee or the Indian landowners must submit the following documents to us to obtain BIA approval of a WSR lease:

(a) A lease executed by the Indian landowners and the lessee that meets the requirements of this part;

(b) For tribal land, a tribal authorization for the lease and, if applicable, meeting the requirements of §§ 162.549(a), 162.555(b), and 162.557(a), or a separate signed certification meeting the requirements of §§ 162.555(b) and 162.557(a));

(c) A valuation, if required under § 162.549 or § 162.550;

(d) Proof of insurance, if required under § 162.562;

(e) A performance bond or other security, if required under § 162.559;

(f) Statement from the appropriate tribal authority that the proposed use is in conformance with applicable tribal law, if required by the tribe;

(g) Environmental and archeological reports, surveys, and site assessments as needed to facilitate compliance with applicable Federal and tribal environmental and land use requirements, including any documentation prepared under § 162.027(b);

(h) A resource development plan that describes the type and location of any permanent improvements the lessee plans to install and a schedule showing the tentative commencement and completion dates for those improvements;

(i) A restoration and reclamation plan (and any subsequent modifications to the plan);

(j) Where the lessee is not an entity owned and operated by the tribe, documents that demonstrate the technical capability of the lessee or lessee's agent to construct, operate, maintain, and terminate the proposed project and the lessee's ability to successfully design, construct, or obtain the funding for a project similar to the proposed project, if appropriate;

(k) A legal description of the land under § 162.547;